

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BULLITT)
UTILITIES, INC. FOR A SURCHARGE) CASE NO. 2016-00401

ORDER

On November 30, 2016, Bullitt Utilities, Inc. (“Bullitt Utilities”), by Robert W. Keats, Chapter 7 Trustee for Bullitt Utilities (“Trustee”), applied for authority to implement a surcharge to pay for some of the extraordinary emergency costs incurred by Bullitt Utilities as a result of the catastrophic failure of its Hunters Hollow Wastewater Treatment Plant in 2014. In describing the application (“Application”), Bullitt Utilities states that it has reviewed the Commission’s December 23, 2014 Order in Case No. 2014-00255,¹ and asserted that it has filed information in support of the instant Application that meets the filing requirements determined sufficient by the Commission for Bullitt Utilities’ prior surcharge application submitted in Case No. 2014-00255.² Bullitt Utilities requests that, to the extent necessary, the Commission waive any other filing requirements set forth by 807 KAR 5:001, Section 16, and 807 KAR 5:071, Section 3.³

Through this Order the Commission identifies the deficiencies in Bullitt Utilities’ Application and grants in part and denies in part Bullitt Utilities’ request for a deviation of

¹ *Application of Bullitt County Sanitation District as Receiver for the Assets of Bullitt Utilities, Inc., for a Certificate of Convenience and Necessity and Surcharge for the Same* (filed July 17, 2014).

² Application (Nov. 30, 2016) at 3–4, and 14–17.

³ *Id.* at 4.

the filing requirements applicable to this Application. The Commission further directs the Trustee to file a brief that addresses certain legal issues concerning Bullitt Utilities' legal rights as a utility and the Commission's jurisdiction to authorize the surcharge.

BACKGROUND

Summary of Events Prior to Bankruptcy

Bullitt Utilities is a Kentucky corporation that owned and operated sewage collection and treatment facilities that served approximately 689 residential customers in the Hunters Hollow Subdivision in Bullitt County, Kentucky.⁴ On March 29, 2014, Bullitt Utilities' wastewater treatment plant ("WWTP") suffered a catastrophic failure when its 250,000-gallon steel aeration tank ruptured.⁵ As a consequence of the failure, untreated wastewater from the Hunters Hollow system began spilling onto the ground and into an unnamed tributary of Brooks Run.⁶ The WWTP could not be repaired,⁷ and in response to the failure of its WWTP, Bullitt Utilities made arrangements to treat the wastewater from the Hunters Hollow system through temporary facilities.⁸

On July 17, 2014, Bullitt Utilities tendered for filing a Petition for Certificate of Public Convenience and Necessity ("CPCN") and for Surcharge.⁹ Initially, Bullitt Utilities sought to construct a 300,000-gallon-per-day WWTP and to impose a surcharge for

⁴ Case No. 2014-00163, *An Investigation of Existing and Future Service of Bullitt Utilities, Inc.* (Ky. PSC May 22, 2014) at 1.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 2.

⁹ Case No. 2014-00255, Order (Ky. PSC Dec. 23, 2014)

costs incurred as a result of the March 29, 2014 failure of its WWTP and for costs to build a new WWTP.¹⁰ In November 2014, Bullitt Utilities executed an agreement with the Bullitt County Sanitation District (“BCSD”) through which BCSD would provide treatment for the wastewater from the Hunters Hollow collection system. Bullitt Utilities subsequently filed an amended application requesting a CPCN for the construction of a lift station, for installation of a line to connect the Hunters Hollow collection system to BCSD’s wastewater treatment system, and for the installation of two flow meters.¹¹

The November 2014 agreement between Bullitt Utilities and BCSD did not authorize BCSD to operate or maintain the Hunters Hollow collection system; rather, the agreement provided for BCSD’s treatment of wastewater flow from the Hunters Hollow system. The responsibility for the operation and maintenance of the Hunters Hollow collection system, and in turn the responsibility for service to the customers served by the Hunters Hollow collection system, remained with Bullitt Utilities.

On December 23, 2014, in Case No. 2014-00255, the Commission entered an Order that, among other things, granted Bullitt Utilities’ request to amend its application and also granted Bullitt Utilities a CPCN to proceed with the construction of facilities necessary to interconnect the Hunters Hollow collection system with the BCSD wastewater system.¹² With respect to Bullitt Utilities’ request for a surcharge, the Commission’s December 23, 2014 Order found that Bullitt Utilities had not met the

¹⁰ *Id.*

¹¹ *Id.* at 2.

¹² *Id.*

minimum filing requirements and ordered that the request for a surcharge not be considered filed until all deficiencies were cured.¹³

In discussing the deficiencies related to the surcharge, the Commission found that Bullitt Utilities' application for a surcharge was a request for a general adjustment of existing rates and was required to conform to the filing requirements set forth in 807 KAR 5:001, Section 16, and 807 KAR 5:071, Section 3.¹⁴ The Commission, however, determined that "the extraordinary emergency experience by Bullitt Utilities" justified waiving all such requirements except for certain documents expressly identified in the Order as necessary for Commission Staff to investigate the request for a surcharge.¹⁵ Bullitt Utilities filed the documents identified in the Order, and its amended application for a surcharge was deemed filed on February 23, 2015.¹⁶

Following the Commission's acceptance of Bullitt Utilities' application for a surcharge in Case No. 2014-00255, the Commission found that, pursuant to KRS 278.190, further proceedings were necessary to determine the reasonableness of the proposed surcharge and established a procedural schedule that included, among other things, multiple rounds of discovery.¹⁷ The Commission granted intervention into Case No. 2014-00255 to the Attorney General of the Commonwealth of Kentucky ("AG").¹⁸

¹³ *Id.* at 8.

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 3–5.

¹⁶ *Id.*, Order establishing procedural schedule (Ky. PSC Mar. 6, 2015) at 1.

¹⁷ *Id.*

¹⁸ *Id.*, Order granting intervention (Ky. PSC Mar. 6, 2015) at 1.

Following an evidentiary hearing in Case No. 2014-00255 on June 9, 2015,¹⁹ the AG and Bullitt Utilities each submitted post-hearing briefs in Case No. 2014-00255.²⁰

On August 21, 2015, while the Application for a surcharge was pending in Case No. 2014-00255, Bullitt Utilities, by a three-page letter from its counsel, filed a notice that was treated by the Commission as an application by Bullitt Utilities for approval to abandon pursuant to KRS 278.020(5).²¹ On August 24, 2015, the Commission entered an Order that, among other things, docketed the matter as Case No. 2015-00290, denied Bullitt Utilities' request to abandon its property to the Commission, opened an investigation into Bullitt Utilities' request to abandon its property, and ordered Bullitt Utilities to appear at a formal hearing held on August 27, 2015.²²

On August 31, 2015, in Case No. 2015-00290, the Commission entered an Order that included the following:

The Commission finds that KRS 278.021 (2) contains the criteria the Commission is required to apply in order to determine whether a utility is abandoned.²³ If the Commission finds that one or more of the four criteria identified in KRS 278.021 (2) is met, then the Commission has no discretion and is required, pursuant to the term "shall" in the statute, to consider the utility abandoned.

During the August 27, 2015 hearing, Christopher G. Cogan testified that he represented Carroll F. Cogan through a Power of Attorney, that Carroll S. Cogan is the sole

¹⁹ *Id.*, Order (Ky. PSC May 15, 2015) at 1.

²⁰ *Id.*, Attorney General's Post Hearing Brief (filed July 20, 2015) and Post-Hearing Brief of Bullitt Utilities, Inc. In Support of Application for Surcharge (filed July 21, 2015).

²¹ Case No. 2015-00290, *Bullitt Utilities, Inc.'s Notice of Surrender and Abandonment of Utility Property* (Ky. PSC Aug. 24, 2015) at 1.

²² *Id.* at 4 and 5.

²³ The procedure for abandonment was subsequently amended by the General Assembly in 2016. See KY Acts 2016, c 50.

shareholder of Bullitt Utilities, and that the Power of Attorney authorized him to act on behalf Bullitt Utilities. The Commission finds that Christopher G. Cogan is authorized to act on behalf of Bullitt Utilities' sole shareholder, Carroll F. Cogan.

Christopher G. Cogan testified that: 1) he authorized Counsel for Bullitt Utilities to send the August 21, 2015 notice regarding abandonment to the Commission's Executive Director; 2) Bullitt Utilities unconditionally disclaims, renounces, relinquishes, or surrenders all property interests or all rights to utility property, real or personal, necessary to provide service; 16 and 3) Bullitt Utilities authorized sending to the Commission the August 21, 2015 notice of intent to abandon the operation of the facilities used to provide service. [Footnote omitted.]

The Commission finds that Bullitt Utilities has carried its burden and met the requirements of KRS 278.021 (2)(a) and (b); therefore, the Commission is required to make a finding of abandonment. However, the Commission must also be guided by the clear directives of the Kentucky General Assembly through their enactment of KRS 278.030(2), which requires every utility to "furnish adequate, efficient and reasonable service," and KRS 278.020(5), which prohibits the abandonment of a utility "without prior approval by the commission." Bullitt Utilities is currently providing wastewater service and any interruption of that service would likely result in a directive from the Bullitt County Health Department that the residences being served are uninhabitable and that they remain so until such time as wastewater service is resumed. Thus, to ensure the continuity of wastewater service and avoid a potential evacuation of 689 residences, the Commission finds that Bullitt Utilities is obligated to continue operating the Hunters Hollow collection system and related facilities for 30 days or until the Franklin Circuit Court enters an Order attaching Bullitt Utilities' assets and placing them under the sole control and responsibility of a receiver, whichever occurs earlier.²⁴

²⁴ Case No. 2015-00290, Order (Ky. PSC Aug. 31, 2015) at 4-6.

On August 31, 2015, the Commission granted the request by Bullitt Utilities to abandon all property interests or all rights to utility property, real or personal, necessary to provide service.²⁵ The Order granting abandonment required Bullitt Utilities to continue operating the Hunters Hollow collection system until the Franklin Circuit Court entered an order attaching the assets of Bullitt Utilities and placing those assets under the sole control and responsibility of a receiver or until September 30, 2015, whichever occurred earlier.²⁶

On September 1, 2015, the Commission, pursuant to KRS 278.021, filed a Complaint in the Franklin Circuit Court seeking an order attaching the assets of Bullitt Utilities and placing those assets under the sole control and responsibility of BCSD as receiver.²⁷ On September 23, 2015, the Franklin Circuit Court entered an order attaching the assets of Bullitt Utilities and appointing BCSD as receiver of those assets.²⁸ The Franklin Circuit Court authorized BCSD to take charge, preserve, operate, control, manage, maintain, and care for the Bullitt Utilities sewage collection and treatment facilities.²⁹ BCSD was also authorized to, among other things, collect all receivables and profits, and to exercise generally the powers conferred by the Franklin

²⁵ *Id.* at 7.

²⁶ *Id.*

²⁷ Case No. 2014-00255, Order (Ky. PSC Oct. 16, 2015) at 3.

²⁸ *Id.*

²⁹ *Id.* at 3 and 4.

Circuit Court and such other powers as are usual and incidental to the management of a public utility providing sewage collection and treatment service to the public.³⁰

On October 16, 2015, the Commission entered an Order in Case No. 2014-00255 finding “that the abandonment by Bullitt Utilities was effective upon the Franklin Circuit Court’s entering the September 23, 2015 Order” attaching the assets of Bullitt Utilities and appointing BCSD as receiver for those assets.³¹ The Commission further stated:

Additionally, we find that BCSD, as receiver, has been vested by the Franklin Circuit Court with sole control and responsibility for the assets of Bullitt Utilities. Further, we find that BCSD, as receiver, is the only entity that has authority to collect the rates and charges to the customers served by the Hunters Hollow collection system, the former customers of Bullitt Utilities. Pursuant to KRS 278.021(6), KRS 278.021 (7), and the Franklin Circuit Court’s September 23, 2015 Order, BCSD, as receiver, is the only entity with authority to bring or defend any action regarding the assets and operations of the Hunters Hollow collection system. The Commission finds that BCSD should be substituted in place of Bullitt Utilities as the applicant in this proceeding.

Bullitt Utilities, having abandoned the Hunters Hollow collection system, no longer has any right to exercise powers regarding the preservation, operation, control, management, maintenance, or care of the assets and operations it has abandoned; therefore, Bullitt Utilities no longer has the right to prosecute this action. The Commission finds that Bullitt Utilities is without authority to continue as the applicant in this proceeding; therefore, Bullitt Utilities should be dismissed as the applicant. We find that Bullitt Utilities should be dismissed as a party to this case.³²

³⁰ *Id.* at 4.

³¹ *Id.*

³² *Id.* at 4–5.

The Commission, in the same Order, further stated:

If Bullitt Utilities seeks to further participate in this case, it is required, per 807 KAR 5:001, Section 4(11)(a), to file a motion requesting leave to intervene in the proceeding. The motion shall state its "interest in the case and how intervention is likely to present issues or develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceeding."³³

Bullitt Utilities was, therefore, dismissed as the applicant in Case No. 2014-00255, Bullitt Utilities was removed as a party to the action, and BCSD, as receiver, was substituted as the applicant in Case No. 2014-00255.³⁴ Bullitt Utilities did not seek rehearing of the October 16, 2015 Order dismissing it as a party from Case No. 2014-00255 or bring an action in the Franklin Circuit Court to vacate or set aside that Order.

On December 9, 2015, the AG and BCSD filed a Joint Motion to Dismiss the Application for a Surcharge ("Joint Motion to Dismiss") without prejudice.³⁵ On December 15, 2015, the Commission entered an Order which found that "BCSD, as Receiver, has been vested by the Franklin Circuit Court with the power to manage the assets of Bullitt Utilities used in providing sewage collection and treatment service to the public," and the Commission dismissed the surcharge application without prejudice.³⁶

Summary of Events Following the Filing of an Involuntary Bankruptcy Petition

Following the Commission's December 15, 2015 Order dismissing, without prejudice, the surcharge application in Case No. 2014-00255, Veolia Water

³³ *Id.* at 5.

³⁴ *Id.* at 6.

³⁵ *Id.*, Joint Motion to Dismiss (filed Dec. 9, 2015).

³⁶ *Id.*, Order (Dec. 15, 2015) at 4.

Technologies, Inc. (“Veolia”) and Perdue Environmental Contracting Company, Inc. (“PECCo”) filed an involuntary Chapter 7 bankruptcy petition with the United States Bankruptcy Court for the Western District of Kentucky (“Bankruptcy Court”).³⁷ Veolia and PECCo had provided temporary wastewater treatment services to the Hunters Hollow collection system and were creditors of Bullitt Utilities. Robert W. Keats was appointed by the Bankruptcy Court as interim Chapter 7 Trustee for Bullitt Utilities on December 29, 2016.³⁸

On January 4, 2016, the Trustee submitted to the Commission an Application of the Interim Chapter 7 Trustee for Bullitt Utilities, Inc., under KRS 278.400 for Rehearing of Order Granting Joint Motion to Dismiss Application for a Surcharge (“Trustee’s Motion for Rehearing”). On January 6, 2016, the Trustee submitted a Supplemental Motion of the United States Bankruptcy Trustee for Reconsideration/Rehearing of Motion to Dismiss Bullitt Utilities’ Application for Surcharge (“Trustee’s Supplemental Motion for Rehearing”) along with his Motion of United States Bankruptcy Trustee for Intervention (“Trustee’s Motion for Intervention”).

The Trustee requested rehearing of the Commission’s December 15, 2015 Order in Case No. 2014-00255.³⁹ Per the Trustee, the requested surcharge in Case No. 2014-00255 “clearly constituted a significant potential asset of Bullitt Utilities” that “if granted, would enable Bullitt Utilities to pay its numerous creditors.”⁴⁰ The Trustee

³⁷ *Id.*, Order (Jan. 21, 2016) at 7.

³⁸ *Id.*

³⁹ *Id.*, Trustee’s Motion for Rehearing (filed Jan. 4, 2016) at 2.

⁴⁰ *Id.*, Trustee’s Supplemental Motion for Rehearing (filed Jan. 6, 2016) at 2.

asserted that BCSD, as receiver of the assets of Bullitt Utilities, did not have the authority to dismiss the surcharge application in the absence of specific approval of the Franklin Circuit Court.⁴¹ The Trustee argued, in the alternative, that even if BCSD had the authority to dismiss the surcharge application pending in Case No. 2014-00255, the dismissal of the surcharge application was contrary to BCSD's fiduciary duty as the receiver of Bullitt Utilities' assets.⁴² The Trustee stated that he was required to protect the assets of Bullitt Utilities' bankruptcy estate and that the Commission should grant him intervention into Case No. 2014-00255 so that he could "take the necessary steps to protect the Bullitt Utilities' assets, including the possible Surcharge."⁴³

On January 11, 2016, the AG and BCSD submitted their Joint Response to Filings of U.S. Bankruptcy Trustee ("Joint Response to Trustee"). The AG and BCSD asserted that: the Trustee's Motion to Intervene was untimely and did not establish the statutory requirements for intervention; intervention by the Trustee would cause complication and disruption; rehearing was not proper under KRS 278.400; and the Trustee did not have authority to seek rehearing because he was not a party to Case No. 2014-00255.⁴⁴ The AG and BCSD requested that the Commission deny the Trustee's Motion for Intervention and request for rehearing.⁴⁵

On January 21, 2016, the Commission entered an Order that granted the Trustee's Motion for Rehearing and Supplemental Motion for Rehearing "for the limited

⁴¹ *Id.* at 3.

⁴² *Id.*

⁴³ *Id.*, Trustee's Motion to Intervene (filed Jan. 6, 2016) at 1.

⁴⁴ *Id.*, Joint Response to Trustee (filed Jan. 11, 2016) at 1-4.

⁴⁵ *Id.* at 4.

purpose of determining whether Bullitt Utilities now has any legal rights as a utility which can be asserted by the Trustee and whether the Commission can grant any relief absent modification or amendment of the Franklin Circuit Court's order appointing BCSD as receiver for the assets of Bullitt Utilities."⁴⁶ The Commission established a procedural schedule for briefing various legal issues described in the Order, and the Commission deferred ruling on the merits of the Trustee's Motion for Intervention.⁴⁷

The Trustee and the AG each submitted responses that addressed the legal issues identified in the Commission's January 21, 2016 Order, and an informal conference was held on March 10, 2016.⁴⁸ On April 14, 2016, the Commission entered an Order that denied the Trustee's Motion for Rehearing and also his Motion to Intervene.⁴⁹

The Commission, in denying the Trustee's motions, found that the Trustee did not "possess any rights greater than those rights held by Bullitt Utilities at the time of commencement of the bankruptcy proceeding."⁵⁰ We found that Bullitt Utilities "no longer had any right or standing to continue with its application" in Case No. 2014-00255 and that our dismissal of Bullitt Utilities as a party was no longer subject to

⁴⁶ *Id.*, Order (Ky. PSC Jan. 21, 2016) at 12 and 13.

⁴⁷ *Id.* at 13.

⁴⁸ *Id.*, Order (Ky. PSC Apr. 14, 2016) at 7.

⁴⁹ *Id.* at 12.

⁵⁰ *Id.* at 7 and 8.

challenge under Kentucky law.⁵¹ The Commission stated: “Because Bullitt Utilities would not be entitled to a rehearing or to intervene, we find that the Trustee’s motions should be denied.”⁵² We further explained:

Moreover, even if Bullitt Utilities were still a party in this case, Bullitt Utilities would not be entitled to a rehearing of the order dismissing the surcharge application. Bullitt Utilities voluntarily abandoned its utility assets and lost its right [to] seek a surcharge prior to the institution of bankruptcy proceedings. By order of the Franklin Circuit Court, Bullitt Utilities’ abandoned assets were placed in the exclusive possession and control of BCSD, as receiver. As a state agency and a party to the receivership case, we are bound to follow the order of the Franklin Circuit Court. [footnote omitted.]

We find that the Bankruptcy Court has exclusive jurisdiction over Bullitt Utilities’ assets and that the Bankruptcy Court’s Order entered December 29, 2015, granted the Trustee “full authority and control over the surcharge claim and any related claims in the possession of the Alleged Debtor.” [emphasis in the April 14, 2016 Order.] However, as of that date, Bullitt Utilities had abandoned all interests in its utility assets, which were then under the control and in possession of BCSD as receiver by Order of the Franklin Circuit Court, and the surcharge application had been dismissed.

While Bullitt Utilities was not entitled to a rehearing or to intervene in its own right in the instant case, nothing herein should be construed to prohibit the Trustee from requesting the Franklin Circuit Court to withdraw its September 23, 2015 Order appointing BCSD as receiver and thereby return to Bullitt Utilities possession and control of the sewer assets it formerly controlled, including the right to seek a rate surcharge. Alternatively, nothing herein should be construed to prohibit the Trustee from seeking an order from the Bankruptcy Court transferring possession and

⁵¹ *Id.* at 8 and 12.

⁵² *Id.* at 7 and 8.

control of these assets from BCSD, as receiver, to the Trustee.⁵³

With respect to the Trustee's motion to intervene, we also stated:

The Trustee does not address the requirements for intervention in his Motion to Intervene. In his response to the Commission's order of January 21, 2016, the Trustee states that his "intervention in this case has already occurred by operation of law and needs no affirmative act from the PSC." [Footnote omitted.]

The Trustee did not cite any authority to support the assertion that his intervention into a case to which Bullitt Utilities is not a party occurred by operation of law, and we are constrained to follow our regulations that govern intervention. We find that the Trustee has failed to articulate a "special interest" in this case, and that the interest he does assert is that of Bullitt Utilities. As discussed above, Bullitt Utilities was dismissed as a party by an Order that is no longer subject to challenge. We find that the Trustee's motion to intervene cannot circumvent the dismissal of Bullitt Utilities from this case, and consequently his motion should be denied.⁵⁴

ANALYSIS

The Commission has before it an Application for a surcharge rate submitted by the Trustee. Prior to accepting the Trustee's Application for filing, the Commission is required to consider the information filed in support of the Application, determine whether it meets the Commission's minimum filing requirements, and rule upon the Trustee's request for a deviation from our minimum filing requirements. Further, in this instance, the Commission is also required to consider Bullitt Utilities' legal rights as a utility and the Commission's jurisdiction to authorize the surcharge.

⁵³ *Id.* at 9 and 10.

⁵⁴ *Id.* at 11 and 12.

Minimum Filing Requirements

As stated by the Commission in Case No. 2014-00255, "Bullitt Utilities' request for a rate surcharge is a request for a general adjustment of existing rates and must conform to the filing requirements set forth in 807 KAR 5:001, Section 16, and 807 KAR 5:071, Section 3."⁵⁵ Therefore, in order for Bullitt Utilities' request for a rate surcharge in the instant case to be accepted for filing, the Application must include all of the information required by 807 KAR 5:001, Section 16, and 807 KAR 5:071, Section 3, unless the Commission enters an Order that authorizes a deviation from a filing requirement contained in either of these two administrative regulations.

Bullitt Utilities, relying upon the Commission's December 23, 2014 Order in Case No. 2014-00255, states that the Application in the instant case meets the Commission's minimum filing requirements because it addresses the seven filing deficiencies found in Bullitt Utilities' prior surcharge application.⁵⁶ Bullitt Utilities requests a waiver of all other filing requirements and argues that "[t]he reasons the Commission waived any other requirements [in Case No. 2014-00255] also apply to this Application."⁵⁷ The Commission finds this argument to be unpersuasive and, therefore, that the Application cannot be accepted for filing until Bullitt Utilities files documents to cure the filing deficiencies identified below.

With respect to the filing requirements found appropriate for Case No. 2014-00255, Bullitt Utilities' Application fails to conform to certain of the seven filing

⁵⁵ *Id.*, Order (Ky. PSC Dec. 23, 2014) at 3.

⁵⁶ Application at 3 and 4.

⁵⁷ *Id.*

requirements identified by the Commission's December 23, 2014 Order in Case No. 2014-00255. The Commission finds the following for Bullitt Utilities' current Application:

807 KAR 5:071, Section 3(2)(b), requires:

A comparative income statement (PSC Form) showing the test period; per books, revenues and expenses, pro forma adjustments to those figures, and explanations for each adjusted entry.

Bullitt Utilities states that a comparative income statement "is unnecessary because the costs sought to be recovered have already been incurred, are non-recurring and are unrelated to BU's annual income and expenses."⁵⁸ Bullitt Utilities adds: "The Commission will be able to examine the expenses submitted by BU's two largest creditors for which BU seeks reimbursement."⁵⁹

The Commission finds the information filed by Bullitt Utilities does not satisfy 807 KAR 5:071, Section 3(2)(b), and further finds that the Commission's investigation into the rate proposed by Bullitt Utilities should not be limited to a consideration of the expenses submitted by Bullitt Utilities' two largest creditors. The Commission finds that Bullitt Utilities fails to demonstrate good cause why it should not be required to conform to 807 KAR 5:071, Section 3(2)(b), and that the request for a deviation from this requirement should be denied.

807 KAR 5:071, Section 3(2)(c), requires:

A detailed analysis of any expenses contained in the comparative income statement which represent an allocation or proration of the total expense.

⁵⁸ *Id.* at 16.

⁵⁹ *Id.*

In requesting that the Commission waive this requirement, Bullitt Utilities relies upon the same reasons offered in support of its request for a waiver 807 KAR 5:071, Section 3(2)(b), discussed immediately above. The Commission finds that the information filed by Bullitt Utilities does not satisfy 807 KAR 5:071, Section 3(2)(c), and that Bullitt Utilities fails to demonstrate good cause why it should not be required to conform to 807 KAR 5:071, Section 3(2)(c). The Commission finds that the request for a deviation from this requirement should be denied.

807 KAR 5:071, Section 3(2)(e), requires:

Copies of all service contracts entered into by the utility for outside services, such as but not limited to: operation and maintenance, sludge hauling, billing, collection, repairs, etc., in order to justify current contract services and charges or proposed changes in said contracts.

Bullitt Utilities states that it “advised in its February 24, 2015 Notice of Filing it had no such contracts.”⁶⁰ The Commission finds that the statement made by Bullitt Utilities in support of this Application concerns a prior representation made approximately 22 months ago in a different case and does not satisfy 807 KAR 5:071, Section 3(2)(e), in the instant case. The statement does not speak to the facts as of the time of the filing of this Application. The Commission finds that it should not be required to speculate as to whether there has been a change in circumstances since February 24, 2015, and further that Bullitt Utilities should be required to conform to 807 KAR 5:071, Section 3(2)(e). The Commission finds that the request for a deviation from this requirement should be denied.

807 KAR 5:071, Section 3(2)(g), requires:

⁶⁰ *Id.*

A detailed customer listing showing number of customers in each customer class and average water consumption for each class of customers.

Bullitt Utilities states that it has provided an exhibit similar to one provided in Case No. 2014-00255.⁶¹ The Commission finds that the information filed by Bullitt Utilities satisfies 807 KAR 5:071, Section 3(2)(g).

807 KAR 5:071, Section 3(2)(h), states:

If the utility has billing and collection services provided by the Louisville Water Company, remittance advices from the Louisville Water Company showing revenues and collection charges should be submitted for the test period.

Bullitt Utilities' Application includes information from Louisville Water Company showing Bullitt Utilities' revenue for 2015.⁶² The Commission finds that the information filed by Bullitt Utilities satisfies 807 KAR 5:071, Section 3(2)(h).

807 KAR 5:071, Section 3(2)(j), requires:

A full and complete explanation of corporate or business relationships between the applicant and a parent or brother sister corporation, subsidiary(ies), a development corporation(s), or any other party or business, to afford the commission a full and complete understanding of the situation.

Bullitt Utilities states that it "advised in its February 24, 2015 Notice of Filing it had no such relationships to disclose."⁶³ The Commission finds that the statement made by Bullitt Utilities in support of this Application concerns a prior representation made approximately 22 months ago in a different case and does not satisfy 807 KAR

⁶¹ *Id.*

⁶² *Id.* at 17.

⁶³ *Id.*

5:071, Section 3(2)(j). The statement does not speak to the facts as of the time of the filing of this Application. The Commission finds that it should not be required to speculate as to whether there has been a change in circumstances since February 24, 2015, and further that Bullitt Utilities should be required to conform to 807 KAR 5:071, Section 3(2)(j). The Commission finds that the request for a deviation from this requirement should be denied.

807 KAR 5:001, Section 16(4)(d), requires:

A statement estimating the effect that each new rate will have upon the revenues of the utility including , at minimum, the total amount of revenues resulting from the increase or decrease and the percentage of the increase or decrease.

Bullitt Utilities' Application includes an estimate of the effect the new rate will have on its revenues.⁶⁴ The Commission finds that the information filed by Bullitt Utilities satisfies 807 KAR 5:001, Section 16(4)(d).

Hence, even under the assumption that the Commission should limit the information necessary to satisfy the filing requirements for this Application to the information determined necessary under the facts of Case No. 2014-00255, Bullitt Utilities' Application is deficient. For the reasons discussed above, the Commission finds that Bullitt Utilities should file additional documents to conform to the requirements of 807 KAR 5:071, Section 3(2)(b); 807 KAR 5:071, Section 3(2)(c); 807 KAR 5:071, Section 3(2)(e); and 807 KAR Section 3(2)(j).

The Commission finds that it should not, in the instant case, limit the filing requirements as it did in Case No. 2014-00255. Specifically, with regard to conformity to the filing requirements of the Commission's administrative regulations, the

⁶⁴ *Id.*

Commission found in Case No. 2014-00255 that “the extraordinary emergency experience by Bullitt Utilities” in Case No. 2014-00255 justified a waiver of numerous other filing requirements.⁶⁵ The Commission finds that the exigency faced by Bullitt Utilities in December 2014 no longer exists. The Hunters Hollow wastewater collection system is now interconnected with the BCSD wastewater treatment system. The temporary WWTPs are no longer serving Bullitt Utilities. As noted by Bullitt Utilities in its Application, the costs sought to be recovered through the surcharge have already been incurred and are non-recurring.⁶⁶

The Commission finds that several of the minimum filing requirements are not necessary for Commission Staff to investigate the request for a surcharge and that it should grant Bullitt Utilities a deviation from the following: 807 KAR 5:071, Section 3(2)(a); 807 KAR 5:001, Section 16(1)(b)2; 807 KAR 5:001, Section 16(1)(b)4; 807 KAR 5:001, Section 16(4)(e); 807 KAR 5:001, Section 16(4)(g); 807 KAR 5:001, Section 16(4)(h); 807 KAR 5:001, Section 16(4)(i); 807 KAR 5:001, Section 16(4)(j); 807 KAR 5:001, Section 16(4)(o); 807 KAR 5:001, Section 16(4)(p); and 807 KAR 5:001, Section 16(4)(q).

The Commission finds that other information required by the minimum filing requirements is necessary for Commission Staff to investigate the request for a surcharge and that it should, therefore, deny Bullitt Utilities’ request for a deviation from the following: 807 KAR 5:071, Section 3(2)(d); 807 KAR 5:071, Section 3(2)(f); 807

⁶⁵ Case No. 2014-00255, Order (Ky. PSC Dec. 23, 2014) at 4 and 5.

⁶⁶ Application at 16.

KAR 5:071, Section 3(2)(i); 807 KAR 5:001, Section 16(4)(a); 807 KAR 5:001, Section 16(4)(c); 807 KAR 5:001, Section 16(4)(k); 807 KAR 5:001, Section 16(4)(n); 807 KAR 5:001, Section 16(4)(r); 807 KAR 5:001, Section 16(4)(t); 807 KAR 5:001, Section 16(5)(a); 807 KAR 5:001, Section 16(5)(b); 807 KAR 5:001, Section 16(5)(c); 807 KAR Section 16(5)(d); and 807 KAR 5:001, Section 16(5)(e). Within ten days of the date of this Order, Bullitt Utilities should cure the filing deficiencies for its request for a surcharge through filing documents identified in this Order.

Legal Issues Concerning Filing by Bullitt Utilities

In support of the Application, the Trustee submitted a Memorandum-Opinion and Order of the Bankruptcy Court dated September 1, 2016, and an Order Regarding Emergency Motion of the Trustee Seeking Entry of an Order (I) Enforcing the Automatic Stay; (II) Ordering the BCSD, as Custodian, to Provide Service to the Debtor's Customers; and (III) Prohibiting the BCSD from Discontinuing Utility Services to the Debtor ("Order Regarding Emergency Motion") dated September 26, 2016.⁶⁷

As the Commission noted in Case No. 2014-00255, "the Bankruptcy Court has exclusive jurisdiction over Bullitt Utilities' assets."⁶⁸ Further, we find that the Bankruptcy Court has authorized the Trustee to act for Bullitt Utilities in all legal proceedings including any potential surcharge claim before the Commission.⁶⁹ However, while the control over the assets of Bullitt Utilities by the Trustee has been comprehensively addressed by the Bankruptcy Court, the Commission finds that the legal status of those

⁶⁷ Application (filed Nov. 30, 2016) at Exhibit F.

⁶⁸ Case No. 2014-00255, Order (Ky. PSC Apr. 16, 2015) at 9.

⁶⁹ Bankruptcy Order Regarding Emergency Motion (entered Sept. 26, 2016) at 2.

assets pursuant to state law and for purposes of the Commission's jurisdiction over rates and service should be briefed by the Trustee and the parties.

The Commission's abandonment Order in Case No. 2015-00290 had no impact on Bullitt Utilities' legal title. Nonetheless, as the Supreme Court of Kentucky determined in *Louisville & Jefferson County Metropolitan Sewer District v. Douglass Hills Sanitation Facility*, bare legal title to a collection system, of itself, has "very little practical significance."⁷⁰

Pursuant to state law and upon a finding that Bullitt Utilities had satisfied all applicable statutory requirements, the Commission authorized Bullitt Utilities to abandon all property interests or all rights to utility property, real or personal, necessary to provide service.⁷¹ Thus, while Bullitt Utilities retained legal title to the assets, Bullitt Utilities relinquished all interests and rights in the property and, as importantly, was permitted to relinquish all rights and responsibilities as a utility subject to the Commission's jurisdiction.

The Commission finds that the Trustee should file a brief that supports his position that Bullitt Utilities has a right under state law to request the surcharge rate. The brief should, at a minimum, address Bullitt Utilities' status as a "utility" (as per KRS 278.010(3)(f)), Bullitt Utilities' legal authority to file a tariff with the Commission, and Bullitt Utilities' interest in the rates collected from, and obligations with respect to the service rendered to, the customers of the Hunters Hollow collection system under state law. The Commission finds that the parties to the case should be permitted to file a brief in response to the Trustee's brief.

⁷⁰ 592 S.W.2d 142, 149, 150 (Ky. 1979).

⁷¹ Case No. 2015-00290, Order (Ky. PSC Aug. 31, 2015) at 7.

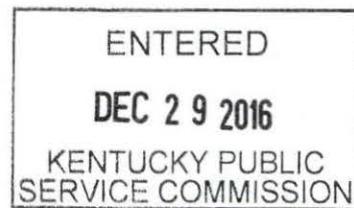
IT IS THEREFORE ORDERED that:

1. Bullitt Utilities' Application for a rate surcharge is not accepted for filing.
2. Bullitt Utilities' request to deviate from the minimum filing requirements is granted for the following: 807 KAR 5:071, Section 3(2)(a); 807 KAR 5:001, Section 16(1)(b)2; 807 KAR 5:001, Section 16(1)(b)4; 807 KAR 5:001, Section 16(4)(e); 807 KAR 5:001, Section 16(4)(g); 807 KAR 5:001, Section 16(4)(h); 807 KAR 5:001, Section 16(4)(i); 807 KAR 5:001, Section 16(4)(j); 807 KAR 5:001, Section 16(4)(o); 807 KAR 5:001, Section 16(4)(p); and 807 KAR 5:001, Section 16(4)(q).
3. Bullitt Utilities request to deviate from the minimum filing requirements is denied for the following: 807 KAR 5:071, Section 3(2)(b); 807 KAR 5:001, Section 3(2)(c); 807 KAR 5:071, Section 3(2)(d); 807 KAR 5:071, Section 3(2)(e); 807 KAR 5:071, Section 3(2)(f); 807 KAR 5:071, Section 3(2)(i); 807 KAR 5:071, Section 3(2)(j); 807 KAR 5:001, Section 16(4)(a); 807 KAR 5:001, Section 16(4)(c); 807 KAR 5:001, Section 16(4)(k); 807 KAR 5:001, Section 16(4)(n); 807 KAR 5:001, Section 16(4)(r); 807 KAR 5:001, Section 16(4)(t); 807 KAR 5:001, Section 16(5)(a); 807 KAR 5:001, Section 16(5)(b); 807 KAR 5:001, Section 16(5)(c); 807 KAR Section 16(5)(d); and 807 KAR 5:001, Section 16(5)(e).
4. A ruling on the legal status of Bullitt Utilities for purposes of the Commission's jurisdiction over rates and service shall be deferred.
5. The Bankruptcy Trustee shall file his brief addressing the issues identified in this Order on or before January 13, 2017.
6. Any party that has been granted intervention may file a response brief to the Bankruptcy Trustee's brief on or before January 27, 2017.

7. Bullitt Utilities' Application for a rate surcharge shall not be considered filed until all deficiencies are cured and the Commission has entered an Order accepting the Application for filing.

8. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

By the Commission



ATTEST:


Executive Director

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